

STATE OF ARIZONA

Department of Revenue



February 4, 2008

Janet Napolitano
Governor

Gale Garriott
Director

The Arizona Department of Revenue has proposed amendments to the administrative rules addressing the imposition of Arizona luxury tax. In an ongoing effort to interact with and inform the public regarding issues relating to taxation, the Department would appreciate your comments on these proposed rules. If applicable, please forward this notice to divisions or members of your organization to whom the proposed rules will apply.

Attached please find a draft of the proposed rules for your review and comment. Please be advised that the deadline for comments is **Friday, March 7, 2008**. Any request for an extension of time for review must also be made by this date. This office will review all comments that are received through this date and make revisions as deemed appropriate before proceeding with the formal rulemaking process.

Please address your comments to:

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Thank you for your continuing efforts in establishing an ongoing line of communication with the Department of Revenue.

Sincerely,

Hsin Pai
Tax Analyst
Tax Research & Analysis

Attachment

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informal review and comment purposes only.*

**ARIZONA ADMINISTRATIVE CODE
TITLE 15. REVENUE
CHAPTER 3. DEPARTMENT OF REVENUE
LUXURY TAX SECTION
ARTICLE 2. GENERAL**

R15-3-201. Definitions

The following definitions apply to the rules in In this Chapter, unless the context requires otherwise specified:

1. "Indian" means any individual registered on the tribal rolls of the Indian tribe for whose benefit the reservation was created.

2. "Indian Reservation" means all lands within the limits of areas set aside by the United States for the exclusive use and occupancy of Indian tribes by treaty, law, or executive order and which are currently recognized as Indian Reservations by the United States Department of the Interior.

3. "Indian Tribe" means any organized nation, tribe, band or community recognized as an "Indian tribe" by the United States Department of the Interior.

1. "Alcoholic beverages" means beer, malt liquor, spirituous liquor, and vinous liquor, as these terms are defined in A.R.S. § 42-3001.

2. "Cigar" has the same meaning as prescribed in A.R.S. § 42-3001.

3. "Cigarette" has the same meaning as prescribed in A.R.S. § 42-3001.

4. "Cigarette distributor" has the same meaning as prescribed in A.R.S. § 42-3001.

5. "Consumer" has the same meaning as prescribed in A.R.S. § 42-3001.

6. "Distributor" has the same meaning as prescribed in A.R.S. § 42-3001.

4. 7. "Other tobacco products" means all ~~types~~ forms of tobacco products fit for human consumption other than cigarettes.

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5. 8. "Place of business," "business location," and "location" mean the place where luxuries are sold, stored or kept for the purpose of sale or distribution or, if sold from a vending machine or mobile unit, the location where records of sale are available for examination.

9. "Primary source of supply" has the same meaning as prescribed in A.R.S. § 4-243.01(E)(1).

~~6. "Returns" means Cigarette Distributors Monthly Report; Distributor's Monthly Return of Cigars or Tobacco Products Received; Wholesaler's Return of Vinous and Malt Liquor Purchased; or Wholesaler's Return of Spirituous Liquor Sold.~~

10. "Retailer" has the same meaning as prescribed in A.R.S. § 42-3001.

~~7.~~ 11. "Sale" means the act of soliciting, receiving an order for, keeping or offering for sale, delivering for value, peddling, keeping with intent to sell, any of the luxuries taxable under this Chapter.

12. "Tobacco products" has the same meaning as prescribed in A.R.S. § 42-3001.

13. "Tobacco taxes" means all taxes imposed on tobacco products under A.R.S. Title 42, Chapter 3.

ARTICLE 3. TAX ON TOBACCO PRODUCTS

R15-3-301. Licensing

A. The Department ~~issues~~ shall issue ~~a tobacco distributor's license~~ licenses for businesses making the initial sales or distribution of tobacco products in this state to a specific person the individuals named in the license applications, pursuant to the requirements of A.R.S. § 42-3201(A). ~~The~~ A licensee shall not transfer the

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1 ~~tobacco~~ its distributor's license to a new owner when selling the its business. A
2 person shall obtain a ~~tobacco~~ distributor's license before engaging in business as
3 a ~~tobacco~~ distributor.

4 **B.** ~~Court appointed trustees, receivers, and others in the case~~ In cases of liquidation,
5 insolvency, or bankruptcy where ~~the business continues to be operated~~
6 businesses selling tobacco products remain in operation, ~~that sell tobacco~~
7 ~~products subject to tax~~ court-appointed trustees, receivers, or others shall obtain
8 ~~a tobacco distributor's license~~ distributor's licenses for the businesses in their
9 own name names.

10 **C.** ~~A licensee that changes its legal entity shall apply for a new tobacco distributor's~~
11 ~~license. A licensee that changes its form of business shall apply for a new~~
12 ~~tobacco distributor's license. For example: A licensee that operates as a sole~~
13 ~~proprietorship incorporates the business. A corporation is a different form of~~
14 ~~business. The licensee shall apply for a new tobacco distributor's license~~ shall
15 apply for a new distributor's license if it changes its legal entity or form of
16 business.

17 **D.** A licensee shall obtain a ~~tobacco~~ distributor's license for each business location
18 and display the license in a conspicuous place at the business location.

19 **E.** ~~A licensee shall display the tobacco distributor's license in a conspicuous place~~
20 ~~at each business location.~~ The Department shall issue a license for a business
21 location only if the business maintains all books, papers, invoices, records, and
22 luxuries subject to the Department's inspection under A.R.S. § 42-3151 in a
23 place and manner at the business location that is accessible to the Department

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1 during normal business hours without a judicial warrant or prior written consent of
2 the licensee. For example, if a licensee or agent of the licensee also uses the
3 business location for residential purposes, the licensee shall maintain its books,
4 papers, invoices, records, and luxuries in a place and manner at the business
5 location that does not require the Department to obtain a judicial warrant or
6 written consent from the licensee or an agent of the licensee before conducting
7 an inspection during normal business hours.

8 **F.** Pursuant to A.R.S. § 42-3201(B), the Department may request an applicant for a
9 distributor's license to submit additional supporting documentation for purposes
10 of enforcing this Section.

11
12 **R15-3-302. Tobacco Products from Manufacturers Not Participating in the Master**
13 **Settlement Agreement**

14 **A.** ~~For purposes of In~~ this Section, the following definitions apply:

- 15 1. "Cigarette" has the same meaning as prescribed in A.R.S. § 44-7101(A),
16 Section 2(d).
- 17 2. "Department" means the Arizona Department of Revenue.
- 18 3. "Excise taxes" means taxes imposed on cigarettes under A.R.S. Title 42,
19 Chapter 3.
- 20 4. "Master Settlement Agreement" has the meaning prescribed in A.R.S. §
21 44-7101(A), Section 2(e).
- 22 5. "Non-participating manufacturer" means a tobacco product manufacturer
23 that is not a "participating manufacturer."

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6. "Original participating manufacturers" means Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated, and R.J. Reynolds Tobacco Company, and the respective successors of each of them.

7. "Participating manufacturer" means the "original participating manufacturers" and "subsequent participating manufacturers."

8. "Subsequent participating manufacturers" means tobacco product manufacturers that have become signatories to the Master Settlement Agreement but that are not original participating manufacturers, and the respective successors of each of them.

9. "Tobacco distributor" means a "distributor" ~~as defined in A.R.S. § 42-3001(5)~~ that has paid or is obligated to pay excise taxes.

10. "Tobacco product manufacturer" has the same meaning as prescribed in A.R.S. § 44-7101(A), Section 2(i).

B. The Department shall maintain a current list of participating manufacturers and make it available to tobacco distributors.

C. A tobacco distributor shall report monthly to the Department on a form provided by the Department:

1. The brand names of each non-participating manufacturer's cigarettes received by the tobacco distributor in Arizona;

2. The brand names of each non-participating manufacturer's cigarettes received by the tobacco distributor outside Arizona and sold by the tobacco distributor in Arizona;

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- 1 3. The name and address of the non-participating manufacturer of each
2 brand of cigarettes identified by the tobacco distributor;
- 3 4. The number of individual cigarettes of each brand of each non-
4 participating manufacturer sold in Arizona by the tobacco distributor during
5 the preceding month, separately stating:
 - 6 a. The number of cigarette packages sold and the number of
7 individual cigarettes in each package; and
 - 8 b. The number of "roll-your-own" tobacco containers sold and the
9 number of individual cigarettes in each container;
- 10 5. The amount of excise taxes paid or to be paid on the cigarettes addressed
11 in subsection (C)(4), separately stating:
 - 12 a. The amount of excise taxes paid by purchasing and affixing tax
13 stamps to cigarette packages;
 - 14 b. The amount of excise taxes to be paid with the tobacco distributor's
15 tax return for "roll-your-own" tobacco containers; and
 - 16 c. Any other amount of excise taxes paid or to be paid on the
17 cigarettes not addressed in subsections (C)(5)(a) or (b);
- 18 6. The number of individual cigarettes of each brand of each non-
19 participating manufacturer received by the tobacco distributor in Arizona,
20 separately stating:
 - 21 a. The number of cigarette packages received and the number of
22 individual cigarettes in each package; and

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- 1 b. The number of "roll-your-own" tobacco containers received and the
2 number of individual cigarettes in each container;
- 3 7. The number of individual cigarettes of each brand of each non-
4 participating manufacturer that the tobacco distributor exported from
5 Arizona without payment of excise taxes, separately stating;
- 6 a. The number of cigarette packages exported and the number of
7 individual cigarettes in each package; and
- 8 b. The number of "roll-your-own" tobacco containers exported and the
9 number of individual cigarettes in each container;
- 10 8. The number of individual cigarettes of each brand of each non-
11 participating manufacturer for which the tobacco distributor obtained a tax
12 refund under A.R.S. § 42-3008, separately stating:
- 13 a. The number of cigarette packages for which the tobacco distributor
14 obtained a tax refund and the number of individual cigarettes in
15 each package; and
- 16 b. The number of "roll-your-own" tobacco containers for which the
17 tobacco distributor obtained a tax refund and the number of
18 individual cigarettes in each container; and
- 19 9. The invoice number (and if subsequently requested by the Department, a
20 copy of each invoice) relating to the tobacco distributor's:
- 21 a. Purchase or acquisition of any non-participating manufacturer's
22 cigarettes received or sold by the tobacco distributor in Arizona;
23 and

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b. Export, if any, of any non-participating manufacturer's cigarettes
from Arizona.

D. A tobacco distributor shall file the report required under subsection (C) with the
Department by the 20th day of the month following the month for which the report
is made. Reports for cigarettes sold in Arizona after April 24, 2000, and before
the effective date of this Section are due 60 days after the effective date of this
Section.

E. A tobacco distributor shall maintain all records relating to or reflecting its
purchase and sale of non-participating manufacturers' cigarettes after April 24,
2000, for a period of four years after the date of sale. The tobacco distributor
shall make the records available to the Department upon request by the
Department.

F. Subject to the requirements of A.A.C. R15-3-308, the Department may revoke a
license issued to a tobacco distributor under A.R.S. § 42-3201 if the tobacco
distributor fails to comply with this Section, based on the severity of the violations.

R15-3-303. ~~Luxury Tax~~ Tobacco Taxes on Other Tobacco Products

The Department shall consider ~~Arizona luxury tax~~ tobacco taxes paid at the time of the
sale, distribution, or transfer of other tobacco products if distributors report and remit the
~~tax~~ taxes on the products in accordance with the manner, method, and time prescribed
by A.R.S. § 42-3208. Sworn returns prepared and remitted by distributors pursuant to
A.R.S. § 42-3208 constitute official indicia that ~~luxury tax~~ tobacco taxes have been
paid on the other tobacco products.

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R15-3-304. Change of Licensee's Business Name

A licensee that changes the name under which ~~the~~ its business operates shall notify the Department in writing within 30 days of the name change and request a reissuance of its ~~tobacco~~ distributor's license for each business location.

R15-3-305. Change of Licensee's Business Location or Mailing Address

A. A Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in the physical location of the ~~its~~ business location and request a reissuance of its ~~tobacco~~ distributor's license for ~~each~~ the business location.

B. A Except as provided in subsection (C), a licensee shall notify the Department in writing within 30 days of a change in its mailing address. The licensee shall specify whether the change is for the mailing address only.

C. A licensee that has received a service of documents from the Department pursuant to A.R.S. § 41-1092.04 shall notify the Department of any change in its business location or mailing address that would affect the subsequent service of documents within 5 days of the change.

R15-3-307. Cancellation of License

If a licensee sells or terminates its business ~~is sold or terminated~~, the licensee shall notify the Department in writing within 30 days of the sale or termination ~~of the business,~~ giving including the date the business was sold or terminated of the sale or termination.

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The Department shall cancel the license, effective as of the date of sale or termination of the business.

R15-3-308. Suspension or Revocation of License Distributor's Licenses

A. The Department may revoke a license for any violation of the provisions of A.R.S. Title 42, Chapter 3, A.R.S. § 44-7111, or this Article.

B. The Department shall give written notice of the a revocation to a licensee 30 days ~~prior to~~ before the effective date of the revocation by delivering the notice to the licensee by ~~certified mail, at the licensee's place of business~~ any method authorized under A.R.S. § 41-1092.04.

C. A licensee has 30 days after the Department mails the notice ~~is mailed~~ to appeal the revocation, in writing, to the Department. If the licensee does not file an appeal within the 30-day period, the Department's determination becomes final.

D. If the licensee files a timely appeal, the Department shall request a hearing by the Office of Administrative Hearings.

E. If the licensee appeals the revocation, the Department shall suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.

R15-3-310. Vending Machine Identification and Inspection

A. A licensee shall ensure that the ~~Department's agents are able to~~ Department's agents can inspect all cigarettes that are ~~distributed through or by~~ sold using vending machines. ~~The~~ Except as provided in subsection (B), the licensee shall visibly display cigarettes in all vending machines so the Department's agents can

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1 inspect the cigarettes in the machines to verify that the required cigarette tax
2 stamps are properly affixed, ~~unless subsection (B) of this rule applies.~~

- 3 **B.** If the cigarettes cannot be visually inspected in a vending machine, the person in
4 possession of the machine shall have access to the cigarettes in the machine
5 and shall permit ~~agents of the Department~~ the Department's agents to inspect
6 the cigarettes visually.

7
8 **R15-3-311. Cigarette Distributor's Monthly Report Repealed**

9 ~~Every distributor selling cigarettes subject to the luxury tax under A.R.S. Title 42,~~
10 ~~Chapter 3 shall file with the Department a "Cigarette Distributor's Monthly Report" on~~
11 ~~the 20th of each month showing:~~

- 12 1. ~~The quantity of cigarettes and cigarette tax stamps purchased and sold or~~
13 ~~otherwise disposed of during the calendar month immediately preceding the~~
14 ~~month in which the report is filed;~~
15 2. ~~The quantity of cigarettes and stamps on hand at the beginning and at the end of~~
16 ~~the month.~~

17
18 **R15-3-312. Purchase of Stamps**

- 19 **A.** A ~~licensed tobacco~~ cigarette distributor shall obtain cigarette tax stamps only
20 from the Department. The Department shall not provide cigarette tax stamps to
21 persons who do not hold a valid license issued by the Department.

- 22 **B.** A cigarette distributor shall not sell, lend, give, or otherwise transfer tax stamps to
23 another person.

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R15-3-313. Expired Invoices Issued by Distributors of Other Tobacco Products

For purposes of enforcing A.R.S. § 42-3202 and pursuant to A.R.S. § 42-3004, a distributor of other tobacco products shall issue an invoice or equivalent documentation for each transaction that involves the sale, purchase, or consignment of other tobacco products to the distributor's customer. The invoice or equivalent documentation shall include the license number of the distributor, which the retailer or consumer may use to ascertain whether the license is current and valid.

R15-3-314. Sales in Interstate or Foreign Commerce

~~Cigarettes or other tobacco~~ Tobacco products sold by licensed distributors to purchasers located outside the state are exempt from ~~the tax imposed by A.R.S. Title 42, Chapter 3, tobacco taxes~~ if the following conditions are met:

1. The ~~cigarettes or other~~ tobacco products are shipped or delivered by the distributor to a location outside the state for use outside the state; and
2. The distributor files a "Cigarette Distributor's Monthly Report" or a "Monthly Return of Cigars or Other Tobacco Products Purchased," as applicable, indicating the amount of out-of-state sales in the appropriate section and the party to whom the sales were made; and:
 - a. Submits one copy of the return or report to the ~~Arizona~~ Department of Revenue;
 - b. Submits one copy of the return or report to the taxing authority of the state of destination of the cigarettes or other tobacco products; and

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c. Retains one copy of the return or report for ~~two years following the close~~
of the calendar year in which the sale is made: for:

1. Four years following the close of the calendar year in which the
sale is made, for cigarettes, or

2. Two years following the close of the calendar year in which the sale
is made, for other tobacco products.

R15-3-315. Credit Purchases of Revenue Stamps

A cigarette distributor may increase its credit limit for cigarette tax stamp purchases by
increasing the amount of the its bond on file with the Department.

R15-3-316. Sale of Unstamped Cigarettes

A. A Except as otherwise provided in A.R.S. Title 42, Chapter 3, Article 5, a
cigarette distributor shall file a Form 800-20 or Form 800-25, Distributor's Monthly
Report, with the Department showing that the cigarette distributor has purchased
a sufficient number of stamps to be affixed to all cigarettes it distributes in this
state during the period. If the cigarette distributor does not provide this
information, the Department shall presume that the cigarette distributor sold
unstamped cigarettes. In that case, the Department shall determine the amount
of unstamped cigarettes sold by the cigarette distributor and shall issue a
proposed deficiency assessment for any luxury tax found due. The proposed
deficiency assessment becomes final unless the cigarette distributor protests the
assessment within 45 days under A.R.S. § 42-1108 and 15 A.A.C. 10, Article 1.

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1 **B.** If a retailer maintains or possesses cigarettes at its place of business that, upon
2 the Department's inspection, are loose or otherwise repackaged in a manner
3 different from that distributed for sale by the cigarette manufacturer, the
4 Department shall presume, unless the retailer establishes the contrary, that the
5 retailer is offering the cigarettes for sale in violation of A.R.S. § 42-3203(E).
6

ARTICLE 4. LIQUOR TAX ON ALCOHOLIC BEVERAGES

R15-3-401. Tax Return Filing Requirements - ~~Vinous or Malt Liquor~~ Wholesaler

9 On or before the statutory deadline each month, each wholesaler of ~~vinous or malt~~
10 liquor shall file a return on a form prescribed by the Department. The return shall show
11 the following:

- 12 1. Taxpayer's name, mailing address, business address, liquor license number
13 issued by the Department of Liquor License and Control, and identification
14 number;
- 15 2. The itemized quantities of ~~vinous and malt liquors~~ liquor purchased during the
16 month the tax accrued, listed by supplier and invoice number;
- 17 3. The itemized quantities of tax-free sales of ~~vinous and malt liquors~~ liquor during
18 the month the tax accrued, listed by purchaser and invoice number;
- 19 4. The itemized quantities of out-of-state sales of ~~vinous and malt liquors~~ liquor
20 during the month the tax accrued, listed by purchaser and invoice number;
- 21 5. The itemized quantities of ~~vinous and malt liquors~~ liquor purchased from other
22 licensed Arizona wholesalers during the month the tax accrued, listed by supplier
23 and invoice number;

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6. The total quantity of ~~vinous and malt liquors~~ liquor purchased in Arizona during the month the tax accrued;
7. The amount of luxury tax accrued during the month; and
8. Supporting documentation for the information provided in the return.

R15-3-402. Tax Return Filing Requirements – Spirituous or Vinous Liquor Wholesaler

On or before the statutory deadline each month, each spirituous or vinous liquor wholesaler shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor License and Control, and identification number;
2. The itemized quantities of spirituous or vinous liquors sold during the month the tax accrued, listed by purchaser and invoice number;
3. The itemized quantities of spirituous or vinous liquors received during the month the tax accrued, listed by supplier and invoice number;
4. The total quantity of spirituous or vinous liquors available at the beginning and at the end of the month the tax accrued;
5. The itemized quantities of tax-free sales of spirituous or vinous liquors during the month the tax accrued, listed by purchaser and invoice number;
6. The itemized quantities of out-of-state sales of spirituous or vinous liquors during the month the tax accrued, listed by purchaser and invoice number;

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7. The itemized quantities of spirituous or vinous liquors sold to other licensed Arizona wholesalers during the month the tax accrued, listed by purchaser and invoice number;
8. The total quantity of spirituous or vinous liquors sold in Arizona during the month the tax accrued;
9. The amount of luxury tax accrued during the month; and
10. Supporting documentation for the information provided in the return.

R15-3-403. Tax Return Filing Requirements - Domestic Microbrewery, Domestic Farm Winery, Domestic Cider Producer, or Beer Manufacturer

On or before the statutory deadline each month, each domestic microbrewery, domestic farm winery including domestic cider producers, or beer manufacturer subject to A.R.S. § 42-3355 shall file a return on a form prescribed by the Department. The return shall show the following:

1. Taxpayer's name, mailing address, business address, liquor license number issued by the Department of Liquor License and Control, and identification number;
2. The itemized quantities of tax-free sales to Arizona purchasers during the month the tax accrued, listed by purchaser and invoice number;
3. ~~The~~ For taxpayers filing for locations physically within the state, itemized quantities of out-of-state sales during the month the tax accrued, listed by purchaser and invoice number;

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- 1 4. The itemized quantities of liquors or beer sold to other licensed Arizona
- 2 wholesalers during the month the tax accrued, listed by purchaser and invoice
- 3 number;
- 4 5. The total quantity of liquors or beer sold in Arizona during the month the tax
- 5 accrued;
- 6 6. The amount of luxury tax accrued during the month; and
- 7 7. Supporting documentation for the information provided in the return.

8
9 **R15-3-404. Repealed Taxes Remitted by Domestic Farm Wineries**

10 Pursuant to A.R.S. § 4-205.04(E), in addition to remitting luxury tax imposed on its sales
11 of vinous liquor to Arizona purchasers, all domestic farm wineries shall remit Arizona
12 transaction privilege tax under the retail classification (see 15 A.A.C. 5, Art. 1) on their
13 gross receipts derived from the sales, regardless of their business locations.

14
15 **R15-3-405. Repealed Alcoholic Beverage Samples**

16 Samples of alcoholic beverages, regardless of whether intended for personal or
17 commercial use and consumption and regardless of whether provided for a
18 consideration, are subject to luxury tax at the rates prescribed in A.R.S. § 42-3052
19 unless otherwise exempt under A.R.S. Tit. 42, Ch. 3.

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R15-3-406. Metric Conversion

To compute the luxury tax for liquors alcoholic beverages in metric containers, each taxpayer shall multiply the quantity in liters by 0.264172 to determine the equivalent quantity in gallons.

R15-3-407. Filing Requirements for a Primary Source of Supply – ~~Failure to Report Sales to Arizona Wholesalers~~

A. At the time of making a sale to a wholesaler located within this state, a primary source of supply shall file with the Department a copy of the sales invoice issued to the wholesaler that provides the information required under A.R.S. § 42-3352.

B. If the Department determines that a primary source of supply failed to transmit to the Department copies of all invoices for sales of alcoholic beverages to wholesalers within the state as required by A.R.S. § 4-243.01, the Department shall instruct each Arizona wholesaler not to accept any shipment of alcoholic beverages from the primary source of supply for one year.

R15-3-408. ~~Arizona Wholesaler~~ – Failure to Report Purchases from a Primary Source of Supply

If the Department determines that an Arizona wholesaler failed to transmit to the Department copies of all invoices for alcoholic beverages purchased from any primary source of supply as required by A.R.S. § 4-243.01, the Department shall report the failure to the Department of Liquor Licenses and Control.

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R15-3-410. Failure to File a Return or Pay Tax

The Department shall report any failure by a licensee to file a return or pay the tax due to the Department of Liquor ~~Licenses~~ License and Control, and the Department shall request that the Department of Liquor ~~Licenses~~ License and Control issue a citation against the licensee.

ARTICLE 5. ADMINISTRATION

~~R15-3-501. Return and payment of tax – general~~ Filing of Reports and Returns

~~A.~~ All reports and returns required to be filed by the Act under A.R.S. Tit. 42, Ch. 3 or ~~these rules~~ this Chapter shall be deemed timely filed if postmarked by the U.S. ~~postal service~~ United States Postal Service or common carrier on or before the due date.

~~B.~~ ~~If the monthly report form is not available, the taxpayer shall submit the taxpayer's report or return on a plain sheet of paper.~~